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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

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10 DIONTAE JOHAN DUNCAN,

Case No. 1:20-cv-01288-SKO (PC)

11 Plaintiff,

**FINDINGS AND RECOMMENDATIONS
TO DENY PLAINTIFF'S MOTION FOR A
TEMPORARY RESTRAINING ORDER**

12 v.

(Doc. 3)

13 CALIFORNIA HEALTHCARE
RECEIVERSHIP CORP., et al.,

14 DAY DEADLINE

15 Defendants.

16 Clerk of the Court to assign a District Judge

17 On September 10, 2020, Plaintiff filed a document titled, “Order to Show Cause for a
18 Temporary Restraining Order.” (Doc. 3.) The Court construes the filing as a motion for a
19 temporary restraining order (TRO). For the reasons set forth below, the Court recommends that
20 the motion be denied.

21 **I. DISCUSSION**

22 “A preliminary injunction is an extraordinary remedy never awarded as of right.”¹ *Winter*
23 *v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 24 (2008) (citation omitted). “A plaintiff seeking a
24 preliminary injunction must establish that he is likely to succeed on the merits, that he is likely to
25 suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his
26 favor, and that an injunction is in the public interest.” *Id.* at 20. “The equitable remedy is

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28 ¹ “The standard for a [temporary restraining order] is the same as for a preliminary injunction.” *Rovio Entm’t Ltd. v. Royal Plush Toys, Inc.*, 907 F. Supp. 2d 1086, 1092 (N.D. Cal. 2012) (citing *Stuhlbarg Int’l Sales Co. v. John D. Brush & Co.*, 240 F.3d 832, 839 n.7 (9th Cir. 2001)) (citation omitted).

1 unavailable absent a showing of irreparable injury, a requirement that cannot be met where there
 2 is no showing of any real or immediate threat that the plaintiff will be wronged again—a
 3 likelihood of substantial and immediate irreparable injury.” *City of Los Angeles v. Lyons*, 461
 4 U.S. 95, 111 (1983) (internal quotation marks and citation omitted).

5 Additionally, a “federal court may issue an injunction [only] if it has personal jurisdiction
 6 over the parties and subject matter jurisdiction over the claim; it may not attempt to determine the
 7 rights of persons not before the court.” *Zepeda v. U.S. I.N.S.*, 753 F.2d 719, 727 (9th Cir. 1983).
 8 “[A]n injunction must be narrowly tailored ‘to affect only those persons over which it has power,’
 9 ... and to remedy only the specific harms shown by the plaintiffs, rather than ‘to enjoin all
 10 possible breaches of the law.’” *Price v. City of Stockton*, 390 F.3d 1105, 1117 (9th Cir. 2004)
 11 (quoting *Zepeda*, 753 F.2d at 727, 728 n.1).

12 The relief Plaintiff requests is not narrowly tailored. Plaintiff seeks, among other things,
 13 an order “restrain[ing]” “staff, agents, employees and all persons acting in concert ... with them
 14 ... from retaliation, harassment, manipulation, duress and ... circumventing the constitutional
 15 right of access to the courts and right to litigate a 1983 civil complaint.” (Doc. 3 at 2.) Plaintiff
 16 does not identify any specific remedy; rather, he appears to seek an order “enjoin[ing] all possible
 17 breaches of the law,” *Zepeda*, 753 F.2d at 728 n.1, against defendants and non-defendants alike.
 18 As stated above, the Court does not have such broad authority.

19 Plaintiff also fails to show that he will suffer irreparable harm without the requested relief.
 20 More precisely, he does not allege what, if any, harm he will suffer without a TRO.

21 “The purpose of a preliminary injunction is merely to preserve the relative positions of the
 22 parties until a trial on the merits can be held.” *Univ. of Texas v. Camenisch*, 451 U.S. 390, 395
 23 (1981). The relief that Plaintiff seeks goes well behind that to which he would be entitled if he
 24 were to succeed at trial in this case.

25 II. CONCLUSION AND RECOMMENDATION

26 For the reasons set forth above, the Court RECOMMENDS that Plaintiff’s motion for a
 27 temporary restraining order (Doc. 3) be DENIED. The Court DIRECTS the Clerk of the Court to
 28 assign a district judge to this action.

These Findings and Recommendations will be submitted to the district judge assigned to this case, pursuant to the provisions of 28 U.S.C. section 636(b)(1). **Within 14 days** of the date of service of these Findings and Recommendations, Plaintiff may file written objections with the Court. The document should be captioned, “Objections to Magistrate Judge’s Findings and Recommendations.” Failure to file objections within the specified time may result in waiver of rights on appeal. *Wilkerson v. Wheeler*, 772 F.3d 834, 839 (9th Cir. 2014) (citing *Baxter v. Sullivan*, 923 F.2d 1391, 1394 (9th Cir. 1991))

IT IS SO ORDERED.

10 Dated: **October 14, 2020**

/s/ Sheila K. Oberlo
UNITED STATES MAGISTRATE JUDGE